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In The
Supreme Court of the United States
October Term, 2000

TOYOTA MOTOR MANUFACTURING,
KENTUCKY, INC.,

Petitioner,

v.

ELLA WILLIAMS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE*, NATIONAL ASSOCIATION OF MANUFACTURERS, IN SUPPORT OF THE PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2(b) of this Court, the National Association of Manufacturers ("NAM") by its undersigned counsel, hereby moves for leave to file its brief as an *amicus curiae* in support of Petitioner, Toyota Motor Manufacturing, Kentucky, Inc.* In support of its Motion, the NAM states:

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* Prior to filing this Motion, the NAM sought the consent of all parties to the filing of its brief, as required by Rule 37.2 of this Court. The Petitioner consented to the NAM's request. The NAM received no response from Respondent to its requests, necessitating this Motion.

The National Association of Manufacturers – "18 million people who make things in America" – is the nation's largest and oldest multi-industry trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employers in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 11 additional offices across the country.

The NAM believes that its *amicus curiae* participation will benefit the Court in this proceeding. It provides the Court with the broad national perspective of large, medium and small businesses in a broad range of sectors that work daily to expand the economic competitiveness of business enterprises, and enhance their ability to expand opportunities and improve living standards for working Americans. Many of the NAM's members operate in multiple jurisdictions and federal judicial circuits. It is illogical, unfair and inappropriate for similarly-situated individuals and business enterprises to face drastically differing legal standards in the interpretation of federal law, depending upon their geographic location. Accordingly, the NAM and its members have a strong interest in securing the resolution of conflicting lower court interpretations of an important statutory question that has spawned much litigation in federal courts and agencies.

WHEREFORE, the National Association of Manufacturers respectfully requests that the Court grant its motion and permit it to file the accompanying brief as an *amicus curiae* in support of the Petitioner.

Respectfully submitted,

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BRIEF OF *AMICUS CURIAE*, NATIONAL ASSOCIATION OF MANUFACTURERS, IN SUPPORT OF THE PETITIONER

INTEREST OF THE *AMICUS*[1]

The National Association of Manufacturers ("NAM") – "18 million people who make things in America" – is the nation's largest and oldest multi-industry trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member

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[1] The NAM hereby certifies, in accordance with Rule 37.6 of this Court, that no counsel for a party authored this brief in whole or in part, and no person or entity, other than the NAM, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

associations serving manufacturers and employers in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 11 additional offices across the country.

The NAM has a significant interest in the questions presented in this case. Its members operate a vast number of production facilities across the United States, with employees performing work assignments of various kinds that require a variety of capabilities and skills. It is essential to such operations that businesses have a clear comprehension of the critical legal standards that govern their flexibility in assigning work, in assessing employee performance and production skills, and in making appropriate decisions in this area. The legal standards enunciated by the appellate panel in this case differ drastically from those advanced by other federal courts. The decision below throws into question the approach of many employers in comparable fact settings, despite the fact that the actions taken by the Petitioner appear to be lawful and appropriate in other federal circuits. Clearly, with respect to an important federal statute that has produced a substantial volume of litigation, it is essential – for both multi-state employers and manufacturers that operate only one production site – that a single national standard determine the lower courts' approach to the critical legal issues involved in this proceeding.

INTRODUCTION AND SUMMARY

A divided panel of the Sixth Circuit has extended the reach of the Americans with Disabilities Act of 1990 ("ADA" or "Act"), Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101 *et seq.*, in the workplace to individuals whose impairments, and in particular carpal tunnel syndrome, preclude them from performing only a narrow category of tasks associated *with their specific job,* but which: a) do not rise to the level of substantially limiting the

major life activity of working, and b) do not substantially limit any other major life activity except as a narrow subset of activities associated solely with the workplace. This ruling is inconsistent with the ADA itself, with the regulations of the Equal Employment Opportunity Commission ("EEOC") implementing the ADA, with recent precedents from this Court, and with decisions from other circuits.[2] If allowed to stand, it will significantly impair the ability of employers, particularly those in the manufacturing sector, to implement uniform, fair policies for their entire workforce, and will place an unreasonable burden on employers to accommodate conditions that Congress never intended the ADA to cover.

The ADA prohibits discrimination by covered entities, including private employers, against qualified individuals with a disability. *See, e.g., Sutton v. United Airlines,* 527 U.S. 471, 477 (1999). The ADA provides that no covered employer "shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job applications procedures, the hiring, advancement or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment." 42 U.S.C. § 12112(a). A "qualified individual with a disability" is identified as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the

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[2] The disparity between the Sixth Circuit's decision in this case and the holdings of courts in other Circuits is well and fully addressed in Petitioner's Petition for a Writ of Certiorari at 9-18, and will not be reiterated by *amicus* NAM. The NAM's support of the Petition will instead focus on the conflict between the Sixth Circuit's decision and recent precedents of this Court construing the ADA, as well as the other reasons why this important and recurring question should be addressed by this Court.

employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

In this case, Respondent Ella Williams was employed by Petitioner Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") as an assembly line worker. During her employment, Respondent developed bilateral carpal tunnel syndrome ("CTS") in her wrists and bilateral tendinitis in her neck and arms. This led to an accommodation whereby she was assigned to what were known as the easiest jobs at TMMK, in the Quality Control Inspection Operations ("QCIO") unit of an assembly line at its facility located in Georgetown, Kentucky. She handled two of the four QCIO jobs, and performed capably for a period of years, until TMMK instituted a policy that all QCIO workers should be cross-trained and capable of performing any of the four jobs. One of the jobs new to Respondent required her to grip a block of wood with a sponge attached and wipe down passing cars with a highlight oil, working at regular intervals with her arms at shoulder height. Thereafter, Respondent allegedly began to experience pain related to her condition and concluded that she was physically unable to perform the new job. She requested that she be reassigned exclusively to her former duties, which she has never disputed that she could continue to perform. Respondent then brought suit under the ADA claiming that she was disabled and that TMMK had failed to offer her a reasonable accommodation.[3]

The crux of this case – and the question that makes a writ of certiorari appropriate – is whether Respondent's inability to use her arms in that limited range of tasks *in a workplace*

[3] In the portion of her suit relevant to the decision below and consideration of this Petition, Respondent contended that her impairment affected the major life activities of performing manual tasks and working.

setting qualifies as a disability within the meaning of the ADA.

"Disability" is defined by the ADA as:

> [W]ith respect to an individual – (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.

42 U.S.C. § 12202(2). At issue in this case is subsection (A), whether Respondent had an actual disability.

The District Court concluded that she did not, granting TMMK's motion for summary judgment. With respect to the major life activity of performing manual tasks, the court concluded that Respondent's claim was "irretrievably contradicted by [her] continual insistence that she could perform the tasks in assembly and paint inspection without difficulty; positions requiring manual tasks. In fact, during the relevant time period, [her] proposed reasonable accommodation was to be reassigned to assembly and paint inspection." App. 36a.[4] With respect to the major life activity of working, the court held that Respondent was required to show more than an inability to perform a single job, the job of her choice, or a narrow range of jobs, and concluded that she had failed to produce such evidence. App. 37a-38a.

Respondent appealed, and a divided panel of the Sixth Circuit reversed. App. 1a-8a. In reaching its decision, the majority purported to limit its holding to a conclusion that Respondent is substantially limited in the major life function

[4] Citation to the unreported opinion of the District Court and to the opinion of the Sixth Circuit reversing the District Court will be to the Appendix to the Petitioner's Petition for a Writ of Certiorari ("App. __").

of "performing manual tasks," as distinct from that of "working." *Id.* at 5a. To reach its conclusion, the majority reached out to this Court's recent decision in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), to import and adapt the "class based" analysis applied in *Sutton* to the major life activity of *working*, and misapplied it. Specifically, the Sixth Circuit held that "in order to be disabled the [Respondent] must show that her manual disability involves a 'class' of manual activities *affecting* the ability to perform tasks at work." App. 5a. The court then concluded that Respondent had presented sufficient evidence that her impairments prevent her from doing tasks "associated with certain types of manual assembly line jobs . . . that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder level for extended periods of time." It went on to state that "[t]he fact that Williams can perform a range of isolated, non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores, does not effect a determination that her imperilment substantially limits her ability to perform the range of manual tasks associated with *an assembly line job*." *Id.* (emphasis supplied).

The standard for proving disability set by the Sixth Circuit effectively creates a new category of major life activity by merging "performing manual tasks" with "working" in cases in which a plaintiff otherwise would not be disabled within the meaning of the ADA under a distinct analysis of either activity. Moreover, it does so by ignoring the plain language of the Act and the regulations, by improperly adapting the "class" analysis of *Sutton*, and by establishing a lesser standard than this Court has specified in its recent decisions. If allowed to stand, the decision will have disastrous repercussions by creating a hierarchy of "disability" within the workplace that will ensure that similarly situated individuals are treated differently, that

litigation over a range of conditions that impose lesser limitations explodes, and that the workplace policies of employers, especially those in the manufacturing sector, are thrown into disarray.

ARGUMENT

I. THE DECISION BELOW IS INCONSISTENT WITH THE ADA, EEOC REGULATIONS, AND SUPREME COURT PRECEDENT.

Less than two years ago, this Court decided three major cases involving disability in the workplace under the ADA: *Sutton*; *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); and *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999). These cases uniformly instruct that the decision of the Sixth Circuit is simply wrong.

A. The Decision Below Is Inconsistent With The Plain Meaning Of The Act And This Court's Decision In *Sutton* As To The Reach Of The ADA.

Sutton does not lead to the inexorable conclusion drawn by the Sixth Circuit, i.e., that the ADA and the EEOC regulations dictate that a "class-based" analysis be employed for a finding of disability under the major life activity of performing manual tasks. Indeed, *Sutton* should be read so as to lead to exactly the opposite conclusion.

In *Sutton*, the Court confirmed that the ADA is to be read as a whole, and given its plain meaning. *Id.* at 481. The plain text of the statute is that an individual must be "substantially limit[ed]" in "one or more major life activities." Respondent is impaired, but *Sutton* confirms that impairment alone is not enough under the Act. *Id.* at 483.

The gloss applied to the Act by the Sixth Circuit is not consistent with the plain meaning of the ADA. Respondent was found *not* to be substantially limited in any major life activity outside of work – she is able to care for herself and

perform personal and household chores. In terms of Respondent's work, the Sixth Circuit concluded that her impairment limits her ability to perform "the range of tasks associated with *an assembly line job*." App. 4a (emphasis supplied). Accordingly, the Sixth Circuit found Respondent has shown that her disability "involves" a *class* of manual activities affecting the ability to perform tasks at work. *Id.*

Simply being unable to perform a limited range of manual functions – the ability to work with a tool grasped in the hand at shoulder height for an extended period of time – is not a disability within the plain meaning of the ADA. There is no *substantial* limitation to a *major life activity* as intended by Congress. In *Sutton*, the Court reviewed at length the origin of the congressional finding contained within the text of the ADA that 43 million Americans are disabled. The Court held that this finding "gives content to the ADA's terms, specifically the term 'disability.'" *Sutton* at 487. While *Sutton* itself involved the question of whether Congress intended to include all persons with corrected physical limitations (such as hypertension controlled by medication), the same analysis applies to the case at bar. This Court drew the logical conclusion that by using that figure, Congress intended coverage under the ADA to take a functional approach to disability, focusing on activity limitations of individuals who, relative to their age-sex group, could not conduct "usual" activities. *Id.* at 486-87. In applying a "class" analysis to manual activities and finding disabled a person with CTS (who admittedly can perform all of the usual manual tasks of living), simply because she cannot perform a narrow range of activities limited to one particular assembly line job, the Sixth Circuit stands this principle on its head.

B. The Decision Below Misapplies Section 1360.2(j) Of The Regulations And This Court's Decision In *Sutton*.

In reaching its conclusion, the Sixth Circuit states that in addition to the Act, it relies upon the EEOC's interpretation of the ADA. Although the court does not explicitly state which interpretation it relied upon, one may presume that the court intended its reference to encompass at least the definitions of "disability" and related terms found in Title 29 of the Code of Federal Regulations at section 1630.2.[5] The

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[5] Within section 1630.2, the definitions of most relevance to the decision below are "major life activities" and portions of "substantially limits," as follows:

> Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

29 C.F.R. § 1630.2(i).

> Substantially limits–
>
> (1) The term substantially limits means:
>
> ....
>
> (ii) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
>
> ....
>
> (3) With respect to the major life activity of working–
>
> (i) The term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job

(continued)

interpretation of the EEOC as embodied in these definitions does not support the conclusion reached by the Sixth Circuit. Rather, it militates against it.

First, the definition of "major life activities" refers to the itemized activities as "functions." 29 C.F.R. § 1630.2(i). This definition, in turn, is taken directly from that utilized in the several Committee Reports that comprise the most significant part of the legislative history of the ADA.[6] Use of the term "functions" by the EEOC to describe the examples of major life activities, in turn, reflects back on Congress's "functional" approach to coverage described and relied upon by this Court in *Sutton*, as discussed above.

Further, nothing in these definitions lends any support to the notion that a "class-based" analysis is appropriate to any major life activity except "working." Exactly the opposite is true. The class-based analysis dictated by the regulations and adopted by this Court in *Sutton* is expressly limited to analysis of the major life activity of working. *See* 29 C.F.R. § 1630.2(j)(3).

Finally, by inferring a "class-based" analysis that permits a plaintiff merely to show that her manual disability involves "a 'class' of manual activities *affecting* the ability to perform tasks at work," App. 4a (emphasis supplied), the Sixth Circuit has fallen prey to at least one of the several "missteps" that this Court found necessary to correct in overturning a decision of the Ninth Circuit in *Albertson's*. *See Albertson's* at 563. In that case, the Ninth Circuit found that an individual with monocular vision was disabled,

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> does not constitute a substantial limitation in the major life activity of working. . . .

29 C.F.R. § 1630.2(j)(1) & (3).

[6] *See*, S.Rep. No. 101–116, at 22 (1989); H.R.Rep. No. 100–485, pt. II at 52, pt. III at 28 (1990).

ostensibly relying upon the EEOC's definition of "substantially limits," on the premise that the manner in which the individual sees "differs significantly" from the manner in which most people see. *Id.* at 564.

This Court concluded that the Ninth Circuit was "too quick to find a disability." *Id.* Of most direct application here, the Court found first that although the EEOC definition of "substantially limits" requires a "significant restriction," the Ninth Circuit undercut a fundamental statutory requirement by transforming "significant restriction" into "difference." *Id.* So too has the Sixth Circuit transformed the EEOC's regulation and undercut a fundamental statutory requirement by equating "affect" with "significantly restrict." Permitting a finding of disability based upon a *class* of manual activities that merely *affect* the ability to perform a limited range of particular tasks at work is, quite simply, at odds with the requirement that only impairments that "substantially limit" by "significantly restricting" a major life activity constitute disabilities under the ADA. The Act concerns itself only with disabilities that are in fact substantial. *Id.*

C. The Decision Below Places An Impermissible Gloss On The Act, Conflicts With This Court's Recent Precedents And Would Create A Hierarchy Of Plaintiffs That Congress Never Intended.

In the final analysis, as pointed out by Judge Boggs in his dissent below, the majority opinion "mistakenly takes what is here primarily a *subset* of abilities related to working, the ability to 'perform manual tasks,' and erroneously treats a partial limitation there as substantially limiting a major life activity," an effect which "conflates (and erodes) the standards for demonstrating a substantial limitation on 'working' and on 'performing manual tasks.'" App. 11a. As pointed out by Judge Boggs, "[t]hese are separate inquiries"

[citing to *McKay v. Toyota Motor Mfg., U.S.A., Inc.*, 110 F.3d 369 (6th Cir. 1997)]. *Id.*

Indeed, in a case such as this, not only is it improper to conflate the two categories of major life activity, but the *only* major life activity by which Respondent's claim of disability should be reviewed is that of "working." In this case, Respondent's physical condition did not restrict her ability to care for herself or function in any meaningful way except at work. *See* App. 4a; 34a-36a. That is, Respondent is evidently capable of performing most manual tasks, such as tying a shoe, opening a door, gripping a pen or holding a steering wheel. The only task she alleges she is restricted from performing (and can support on the record), is working for extended periods of time with her arms at shoulder height while holding a tool in her hand. There is no life setting where this manual task would be relevant to the average individual *except* working. Where the impairment alleged by a plaintiff only impacts her performance in the workplace, then the only proper analysis under the ADA is whether the impairment affects the major life activity of working even if the impairment arguably impacts another category. Any other analysis inevitably will lead to the strained constructs and "conflating" engineered by the Sixth Circuit.

This Court's decisions in *Sutton*, *supra*, and in *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999), support this analysis. In *Sutton*, the individuals' eyesight impairment only affected their ability to fly commercial airplanes, and in *Murphy*, the individual's hypertension impairment only affected his ability to drive a commercial motor vehicle. Seeing is, by definition, a major life activity, and driving a vehicle in our society is arguably no less a major life activity than performing manual tasks or participating in community activities. Flying or driving a commercial vehicle for work purposes is as much a subset of both "flying/driving" and "working" as grasping a block of wood at shoulder height is a subset of both "manual tasks" and "working." Certiorari

was granted in *Sutton* and *Murphy* on the question of whether the individuals were regarded as disabled. Yet, the analysis in both cases concentrated properly and exclusively on whether the individuals were regarded as disabled under the major life activity of working. *See Sutton* at 490-94; *Murphy* at 523-25.

In each case, this Court found that the individuals in question were not disabled from the major life activity of working because their disabilities only foreclosed them from a particular job or narrow class of jobs. When the major life activity under consideration in an ADA action is that of working, the statutory phrase "substantially limits" requires, at a minimum, that plaintiffs show they are unable to work in a broad class of jobs. *See Sutton* at 491-92; *Murphy* at 523-24.

The same result should obtain in this case, and all others like it involving alleged impairments whose primary impact for individuals is on the major life activity of working. Disability cases properly are evaluated under the major life activity of working when the impairment only or primarily impacts that facet of the individual's lives, and other activities only as they relate to working. Permitting plaintiffs to construct "classes" or subsets of "major life activities" that are meaningful only in the workplace – classes that are, in reality, associated with a particular job or class of jobs – would eviscerate *Sutton* and *Murphy*. Only plaintiffs who could not find a way to categorize their impairment as a "class" of activities associated with another major life activity would be obliged to prove that they were restricted from more than one job or a narrow class of jobs.[7]

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[7] For example, in considering the disability claim of a plaintiff with a hip impairment that limited his ability to walk and climb stairs, the Third Circuit had occasion to catalogue numerous reported cases examining when difficulty walking and moving

(continued)

II. MISCLASSIFYING CTS AS A DISABILITY IN CIRCUMSTANCES SUCH AS THOSE PRESENT IN THIS CASE WILL FURTHER INUNDATE COURT DOCKETS WITH ADA CLAIMS, IMPOSING UNNECESSARY STRAINS ON EMPLOYERS, EMPLOYEES, AND THE JUDICIAL SYSTEM.

The questions raised by this case are of great consequence to employers, and those in the manufacturing sector in particular, because conditions such as those present here are reported with some frequency by workers. In some instances, recommended limitations may preclude the affected employee from performing the tasks associated with a specific job. The extent to which employers must accommodate such conditions and comparable limitations, and whether national employers will need to provide different accommodations in the Sixth Circuit than in other areas of the country, is thus of considerable and growing importance.

The ADA and this Court dictate that each individual claim of disability be evaluated on its own merits. *See, e.g., Albertson's* at 566. But it is inevitable that the Sixth Circuit's ruling, if allowed to stand uncorrected, will become known as "the CTS case," and invoked by plaintiffs for the

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equates to a significant limitation on the "major life activity" of walking. *See Kelly v. Drexel University*, 94 F.3d 102, 107-08 (3d Cir. 1996); *see also McCleary v. National Cold Storage, Inc.*, 67 F.Supp.2d 1288, 1301 (D. Kansas 1999) (same; citing *Kelly* and collecting additional cases). Most of the cases reviewed arose in the employment setting. Under the Sixth Circuit's analysis, such plaintiffs could demonstrate a disability by showing that their leg or foot impairment merely "affects" their ability to perform job-related tasks that are otherwise insufficient to show disability based on a substantial limitation to the activities of "walking" or "working."

proposition that if an individual can demonstrate that her CTS (or a similar condition) merely "affects" her "ability to perform at work," she will have made out a claim of disability under the ADA. This outcome will inundate court dockets, the EEOC and deferral agencies with ADA claims, imposing unnecessary strains on employers, employees and the judicial system.

A. The Additional Cost To Employers Of Defending Against Unnecessary Lawsuits Would Be Unduly Burdensome And Counterproductive.

Treating carpal tunnel syndrome (and comparable limitations) that only "affect" a subset of abilities related to working as a disability will dramatically increase the number of ADA lawsuits filed against well-meaning employers. The ultimate result will be that an inordinate amount of time and resources will be diverted away from broader workplace safety and health efforts and from accommodation of individuals who have disabilities that truly restrict major life activities, to defending against claims not covered by the statute.

Individual complaints of CTS are a wide-spread workplace phenomenon. An estimated 849,000 Americans visit their doctors each year complaining of CTS-like symptoms.[8]

Two facts relating to reported incidence of CTS-like symptoms are worth noting. First, many employees truly suffering from CTS and similar repetitive motion disorders are not without recourse. In most states, workers' compensation coverage provides a range of relief for such temporary and treatable injuries that arise from and in the

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[8] *Facts About Carpal Tunnel Syndrome*, AMERICAN ACADEMY OF ORTHOPEDIC SURGEONS, published at http://www.aaos.org /wordhtml/press/carpalfa.htm.

course of employment. Although common, CTS is usually a short-lived condition. Only about one percent of individuals with carpal tunnel syndrome develop permanent injury.[9] Most individuals with CTS completely recover.[10] Such short-term injuries are the types of conditions for which workers' compensation was designed.

Second, the current cost to employers can be significant. Attaching "disability" status to a common injury in circumstances in which limitations are less severe will no doubt cause defense costs to spiral out of control. Not only are lawsuits financially crippling, so too are damage awards to ADA plaintiffs. From July 26, 1992 through September 30, 1999, ADA cases filed with the Equal Employment Opportunity Commission ("EEOC") involving claims of various cumulative trauma disorders resulted in $2,735,556 being paid to 179 individuals.[11] The number of people receiving monetary benefits increased steadily throughout this period. In 1999 alone, 52 plaintiffs were awarded over half a million dollars.[12]

Presumably, such awards are restricted to actions impacting individuals whose conditions truly limit major life activities. Inappropriately classifying cases of CTS that only "affect" a subset of one's abilities that relate to working as a disability under the ADA will dramatically expand employer

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[9] *NINDS Carpal Tunnel Syndrome Information Page*, NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE, published at http://www.minds.nih.gov/health_and_medical/disorders/carpal_doc.htm.

[10] *Id.*

[11] *Cumulative ADA Charge Data - Monetary Benefits from July 26, 1992 – September 30, 1999,* U.S. Equal Employment Opportunity Commission, published at http://www.eeoc.gov/stats/ada-monetary.html.

[12] *Id.*

legal and financial exposure, imposing broad costs on the individual employer and the economy in general.

B. Our Over-Taxed Judicial System Will Also Feel The Strain Of Increased Litigation.

Placing treatable ailments such as CTS under the ADA umbrella simply because it affects the ability to perform a narrow range of manual tasks will open the floodgates to a crippling surge of litigation. Private employment suits are already growing at an astronomical rate. In January of the year 2000, the Bureau of Justice Statistics published a study showing that from 1990 through 1998, private employment-related civil rights cases nearly tripled.[13]

These employment-related complaints accounted for approximately 65 percent of the overall increase in cases that have flooded the U.S. District Courts during this period.[14] This surge is due in large part to the ADA.[15] Providing legal redress under the ADA to many of the estimated 849,000 individuals who report CTS-like symptoms each year will substantially tax the resources of the court system.

The shear number of potential litigants compounded with the average delays in case processing will overwhelm the federal court dockets. The life span of an average employment case has increased considerably. According to the Federal Judicial Center, it takes almost two years (679.5 days) from the time an average case is filed in U.S. District

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[13] Marika F.X. Litras, *Civil Rights Complaints in U.S. District Court, 1990-98*, (NCJ-173427). Employment discrimination cases increased from 8,413 filings in 1990 to 23,735 in 1998.

[14] *Id.*

[15] 1998 JUDICIAL BUSINESS, United States Federal Judiciary, published at http://www.uscourts.gov/dirrpt98/judbus.pdf.

Court until the date of resolution.[16] Other surveys have found this to be a conservative estimate, finding instead that the average civil case lasts from two-and-one-half years[17] to eight years,[18] depending on the jurisdiction and the nature of the case.

Additionally, the EEOC's case resolution process works slowly. The EEOC itself has reported in recent years that it can take the agency nearly two years, on average, to process an employee's charge.[19] Thus, litigation is not a means of achieving swift justice. The end result is that all parties – the employee, employer, and court system – will suffer.

CONCLUSION

The National Association of Manufacturers respectfully urges this Court to grant the writ of certiorari to review the judgment below, to reverse the ruling that would permit plaintiffs to assert disability under the ADA based upon an impairment that only precludes the individual from performing a narrow subset of manual tasks associated with a specific job, and to affirm the principle that if an impairment only affects an individual's ability to work, that

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[16] Lewis Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 COLUM. HUMAN RIGHTS L. REV. 29, 56 (Fall 1998)

[17] B. Mahoney *et al.*, Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts: Preliminary Findings, Vol. 8 (1985).

[18] *Evaluating and Using Employer-Initiated Arbitration Rules and Agreements in Employment Discrimination and Civil Rights Actions in Federal and State Courts* (ADLI-ABA Course of Study, Apr. 28-30) 875, 894 (1994).

[19] *Summary of Enforcement Data and Budget and Staffing Information for the EEOC: FY 1991 through FY 1997*, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission (Dec. 8, 1997).

asserted disability must be judged under the standards applicable to the major life activity of "working."

Respectfully submitted,

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